



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Milwaukee Enrollment Services, Petitioner

vs.

DECISION
Case #: FOF - 159417

██████████ Respondent

Pursuant to petition filed July 29, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. §273.16, to review a decision by the Milwaukee Enrollment Services to disqualify ██████████ from receiving FoodShare benefits (FS) for one year, a hearing was held on Tuesday, September 16, 2014 at 01:30 PM, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

PARTIES IN INTEREST:

Petitioner:

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205
By: Pamela Hazley, HSPC Sr.

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Milwaukee County who received FS benefits in Milwaukee County from May 26, 2011 through June 30, 2014.

2. On May 26, 2011 the respondent applied for FS. She listed her husband as an absent parent as of 1/1/96 on the application and signed off on the application acknowledging her reporting requirements. See Exhibits 3 and 4.
3. On September 26, 2011 respondent completed a six month review form (SMRF) in which she again does not list her husband in the home. See Exhibits 6 and 7.
4. In April 2012 respondent completed another review in which she again does not list her husband in the home. See Exhibits 8 and 9.
5. On October 1, 2012 respondent completed another SMRF in which she again does not list her husband in the home. See Exhibit 10.
6. In April 2013 respondent completed another review in which she again does not list her husband in the home. See Exhibits 11 and 12.
7. On September 30, 2013 respondent completed another SMRF in which she again does not list her husband in the home. See Exhibits 13 and 14.
8. In March 2014, respondent called the agency to update her case. At that time the agency worker noticed that respondent's expenses were higher than income and that her husband's employment information listed his address as the same as respondent's. The agency worker then referred the matter to the Program Integrity Unit (PIU). See Exhibit 2.
9. On April 11, 2014 respondent completed another review in which she again does not list her husband in the home. See Exhibits 15 and 16.
10. The agency consistently mailed respondent FS program information about FS rules, reporting requirements and sanctions for FS violations. See Exhibits 17 and 20.
11. In June 2014 the PIU investigated this matter and discovered evidence (See Exhibit 19) that led the agency to determine that respondent's husband was living in her home:
 - a. DOT records showing they co-own a vehicle registered to respondent's address;
 - b. Property assessment records that show they jointly own the home located at respondent's address;
 - c. Wisconsin Court System Circuit Court Access (a/k/a CCAP) records showing the respondent's husband's address of record as respondent's address as of June 2012;
 - d. Milwaukee Municipal Court records showing the respondent's husband's address of record as respondent's address as of November 2012;
 - e. Wisconsin Court System Circuit Court Access records showing the respondent's husband's address of record as respondent's address as of October 2013;
 - f. Voting records showing the respondent's husband's address of record as respondent's address since 2008;
 - g. Credit reports showing the respondent's husband's address of record as respondent's address currently as well as previous addresses being the same as the respondent's;
 - h. Respondent's husband's employment records showing the respondent's husband's address of record as respondent's address;
 - i. Wisconsin Child Support records (KIDS) showing the respondent's husband's address of record as respondent's address and that child support determined he was in the home as of December 9, 2009.

- j. Reports that respondent and her husband had filed federal taxes using the respondent's address (Exhibit 18).
12. On June 17, 2014 the agency issued a FoodShare Overpayment Notices to respondent stating that she has been overpaid FS due to client error for failing to report accurate household members. See Exhibit 21.
13. On August 5, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent intentionally concealed or withheld facts for the purpose of receiving FS.
14. The respondent failed to appear for the scheduled September 16, 2014 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

FoodShare Wisconsin Handbook, §3.14.1; *see also* 7 C.F.R. §273.16(c) and Wis. Stat. §946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, §3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. §273.16(b).

7 C.F.R. §273.16(e)(4) provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. The respondent did not appear or claim a good cause reason for not attending the hearing. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the opposite is true.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

I find that the respondent misrepresented that her husband was not living with her in order to receive more FS in Wisconsin. The documentation showing that they share the same address is uncontradicted by any credible explanation. For example, the documentation includes voting records showing the husband registered to her address. It is undisputed that in order to register to vote in Wisconsin, one must provide proof of residence, and that falsification of information on a voter registration form is punishable under Wisconsin law as a Class I felony. See Wis. Stat. §6.33. The overpayment worksheets show that his earned income would have put them over the FS income limit and they would not have been eligible for FS had that income been reported in the household. The continuous affirmative reporting that he was not in the home at each FS renewal led them to receive FS to which they were not entitled. The respondent has not responded to the allegations either by way of this hearing or in response to the overpayments. I will take her lack of response and appearance as an admission of the allegations and find that the agency has met its burden of proof with the evidence it has presented that the intentional program violation occurred.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that an intentional program violation of the FoodShare program occurs when a recipient intentionally makes a false or misleading statement, or misrepresents, conceals or withholds facts for the purposes of receiving FS.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of September, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Miles - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Pamela Hazley - email



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The preceding decision was sent to the following parties on September 30, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
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